WC 09-135

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REDACTED – FOR PUBLIC INSPECTION

FILED/ACCEPTED

MAR 24 2009

Federal Communications Commission
Office of the Secretary

Via Courier

March 24, 2009

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: *In the Matter of Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area* -- Request for Confidential Treatment and Confidentiality Justification

Dear Ms. Dortch:

Qwest Corporation ("Qwest") hereby requests confidential treatment for the attached Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area. This request also covers the appended Declaration of Robert H. Brigham to the Petition. The Petition and Declaration contain some information integrated into the text that is confidential; in addition, the Declaration appended to the Petition has associated with it confidential and *highly confidential* Exhibits. The pages of the Petition and Declaration, along with the Exhibits that contain confidential information have been marked "**CONFIDENTIAL – NOT FOR PUBLIC INSPECTION**"; Exhibit 7, which contains highly confidential information, has been marked "**HIGHLY CONFIDENTIAL – NOT FOR PUBLIC INSPECTION – COPYING PROHIBITED**".[1] As such, Qwest requests that the non-redacted version of the Petition, Declaration and Exhibits containing confidential or highly confidential data be withheld from public inspection. Qwest also requests that no further copies be made of material marked highly confidential.

In this Petition, Qwest seeks forbearance from significant, burdensome regulations, particularly loop and transport unbundling and dominant carrier regulation throughout the Phoenix, Arizona Metropolitan Statistical Area.

[1] Qwest will modify the language in future filings in accordance with the language of the Protective Orders issued after the Petition is docketed.

Qwest is submitting the non-redacted versions of its Petition, the Declaration and Exhibits 1, 2, 6, 7, 8A, 8B and 14 pursuant to both Commission rules 47 C.F.R. §§ 0.457 and 0.459. The confidential and highly confidential information included in these documents is competitively sensitive information and thus should not be available for public inspection, and in the case of highly confidential information no copies should be made. A release of this material would have a substantial negative competitive impact on Qwest. Pursuant to Commission rule, 47 C.F.R. § 0.459(b), Qwest provides justification for the confidential treatment of this information in the Appendix to this letter. The non-redacted portions of the Petition and associated documents contain, *inter alia*, Qwest's confidential and highly confidential information, including some vendor-provided confidential information. Such information would not ordinarily be made available to the public, and disclosure may cause substantial competitive harm to Qwest. Accordingly, the non-redacted information is appropriate for non-disclosure under both Sections 0.457(d) and 0.459 of the Commission's rules.

Because it was not feasible to separate out the confidential and proprietary information, *see* 47 C.F.R. § 0.459(a), without destroying the integrated nature of the information presented in the Petition and associated Declaration, Qwest is also submitting today under separate cover redacted versions of the Petition and Declaration, along with the non-confidential Exhibits. The redacted versions of the Petition and Declaration are marked "**REDACTED -- FOR PUBLIC INSPECTION**", with the confidential information redacted. Exhibits 1, 2, 6, 7, 8A, 8B and 14 have been omitted in their entirety or the confidential/highly confidential data has been removed in the redacted version of the Petition.

As to certain confidential information referred to in its Petition, Qwest relies upon only aggregate data to assess facilities-based providers' share of the Phoenix Metropolitan Statistical Area market. This is because the First Protective Order in WC Docket No. 07-97, 22 FCC Rcd 10129 (2007), prohibits the use of the disaggregated Cox access line data from that docket in the new proceeding to be established for this Petition. While the Commission could allow the First Protective Order from WC Docket No. 07-97 to be modified to allow use of that Cox data in the new proceeding, to corroborate what the aggregate data demonstrates, the far better alternative is for the Commission to request that Cox provide updated line counts in this proceeding.

For the redacted version of the Petition, Qwest is providing an original and four copies. For the non-redacted version of the Petition, Qwest is providing one original copy. For both the redacted and non-redacted versions of this submission, Qwest is providing an extra copy, to be stamped and returned to the courier. In addition, Qwest is providing via courier three complete copies (redacted and non-redacted versions, including confidential and highly confidential material) of the Petition and associated documents to Randy Clarke of the Wireline Competition Bureau. Qwest is also serving a copy of the redacted version of its Petition on the FCC's contractor, Best Copy and Printing, Inc.

Please contact me at the above contact information or Melissa Newman in Qwest's Federal Relations office (202-429-3120) if you have any questions.

Sincerely,

/s/ Harisha Bastiampillai

Attachments

cc: Randy Clarke (via courier)
Best Copy and Printing, Inc.

APPENDIX

Confidentiality Justification

Qwest requests confidential treatment of the information being provided in its Petition, the Declaration of Robert H. Brigham and its attached Exhibits 1, 2, 6, 7, 8A, 8B and 14 because this information is competitively sensitive and its disclosure would have a negative competitive impact on Qwest were it made publicly available. Such information would not ordinarily be made available to the public, and should be afforded confidential treatment under both 47 C.F.R. §§ 0.457 and 0.459.

47 C.F.R. § 0.457

Specific information in the Petition and the Declaration, as well as the attached Exhibits 1, 2, 6, 7, 8A, 8B and 14, is confidential and proprietary (and in the case of Exhibit 7 is highly confidential) to Qwest as "commercial or financial information" under Section 0.457(d). Disclosure of such information to the public would risk revealing company-sensitive proprietary information in connection with Qwest's ongoing business plans and operations. Therefore, in the normal course of Commission practice this information should be considered "Records not routinely available for public inspection."

47 C.F.R. § 0.459

Specific information in the Petition and the Declaration as well as the attached Exhibits 1, 2, 6, 7, 8A, 8B and 14, is also subject to protection under 47 C.F.R. § 0.459, as demonstrated below.

Information for which confidential treatment is sought

Qwest requests that specific information in the Petition and the Declaration (set off with two sets of three asterices) as well as the attached Exhibits 1, 2, 6, 8A, 8B and 14, be treated on a confidential basis under Exemption 4 of the Freedom of Information Act and that Exhibit 7 be treated on a highly confidential basis under the same Exemption 4. This information is competitively sensitive data that Qwest maintains as confidential and is not normally made available to the public. Release of the information would have a substantial negative competitive impact on Qwest. The confidential information is contained in the non-redacted version of Qwest's Petition and Declaration, as well as in the attached Exhibits 1, 2, 6, 7, 8A, 8B and 14, and is marked, as appropriate, either "**CONFIDENTIAL – NOT FOR PUBLIC INSPECTION**" or "**HIGHLY CONFIDENTIAL – NOT FOR PUBLIC INSPECTION – COPYING PROHIBITED**".

Commission proceeding in which the information was submitted

The information is being submitted in connection with the Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area, which will be docketed at a later date.

Degree to which the information in question is commercial or financial, or contains a trade secret or is privileged

The competitive information designated as confidential (or in the case of Exhibit 7, highly confidential) is detailed information regarding Qwest's number of access lines, retail residential lines, retail business lines, special access lines, wholesale customers, wholesale unit sales and revenue shares. As noted above, the data is competitively sensitive information which is not normally released to the public as such release would have a substantial negative competitive impact on Qwest. Also, some of the confidential information is vendor-provided to Qwest, and thus it is not publicly available.

Degree to which the information concerns a service that is subject to competition; and manner in which disclosure of the information could result in substantial competitive harm

This type of commercial information would generally not be subject to routine public inspection under the Commission's rules (47 C.F.R. § 0.457(d)), demonstrating that the Commission already anticipates that the release of this kind of information likely would produce competitive harm. Qwest confirms that release of its confidential and proprietary information would cause it competitive harm by allowing its competitors to become aware of sensitive proprietary information regarding the operation of Qwest's business.

Measures taken by Qwest to prevent unauthorized disclosure; and availability of the information to the public and extent of any previous disclosure of the information to third parties

Qwest has treated and treats the non-public information disclosed in its Petition, the Declaration and its attached Exhibits 1, 2, 6, 7, 8A, 8B and 14 as confidential, and/or highly confidential, and has protected it from public disclosure to parties outside of the company.

Justification of the period during which Qwest asserts that the material should not be available for public disclosure

Qwest cannot determine at this time any date on which this information should not be considered confidential or would become stale for purposes of the current matters, except that the information would be handled in conformity with general Qwest records retention policies, absent any continuing legal hold on the data.

<u>Other information that Qwest believes may be useful in assessing whether its request for confidentiality should be granted</u>

Under applicable Commission and court rulings, the information in question should be withheld from public disclosure. Exemption 4 of the Freedom of Information Act shields information that is (1) commercial or financial in nature; (2) obtained from a person outside government; and (3) privileged or confidential. The information in question satisfies this test.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Petition of Qwest Corporation for Forbearance	)	WC Docket No. ________
Pursuant to 47 U.S.C. § 160(c) in the Phoenix,	)	
Arizona Metropolitan Statistical Area	)	

PETITION OF QWEST CORPORATION FOR FORBEARANCE PURSUANT TO 47 U.S.C. § 160(c)

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303-383-6671

Attorneys for

QWEST CORPORATION

March 24, 2009

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area	)))))	WC Docket No. __________

PETITION OF QWEST CORPORATION FOR FORBEARANCE PURSUANT TO 47 U.S.C. § 160(c)

I. INTRODUCTION AND SUMMARY

Qwest Corporation ("Qwest") seeks forbearance from significant, burdensome regulation, particularly loop and transport unbundling and dominant carrier regulation throughout the Phoenix-Mesa-Scottsdale Metropolitan Statistical Area ("Phoenix MSA") which encompasses Maricopa and Pinal Counties. Qwest's service area footprint within the MSA consists of 64 wire centers, and Qwest's request for relief is limited to its service area within these wire centers as depicted in Confidential Exhibit 1 of the Declaration of Robert Brigham.[1] In this service area footprint, Qwest faces competition from a wide range of technologies and a broad array of service providers.

This marks the second Petition Qwest has made seeking the aforementioned forbearance for the Phoenix MSA. The intermodal competition Qwest faces in the Phoenix MSA is even more pronounced than it was on July 25, 2008 when this Federal Communications Commission ("Commission" or "FCC") found Qwest on the cusp of meeting the standards for forbearance in certain Phoenix wire centers.[2] The Commission noted at that time that if it had relied on Qwest's

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[1] These wire centers are listed in alphabetical order in Confidential Exhibit 2.

[2] *In the Matter of Petitions of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Denver, Minneapolis-St. Paul, Phoenix, and Seattle Metropolitan Statistical*

third-party studies regarding wireless substitution, Qwest's market share in conjunction with other evidence, likely would have been sufficient to grant forbearance under Commission precedence. Indeed, the Commission found that Qwest had met the 75% "coverage" test for much of Phoenix, in that competitors had deployed facilities of their own sufficient to reach 75% of end-user locations in the relevant wire centers.[3] The Commission nonetheless rejected Qwest's Petition because of: (i) the lack of Phoenix-specific wireless substitution data that the Commission deemed reliable;[4] and (ii) the absence of sufficient evidence to estimate the total amount of enterprise switched access lines in service in any of the four MSAs.[5]

This Petition along with the attached declaration and supporting evidence, not only addresses these Commission concerns, but demonstrates that consideration of these factors today provides an even stronger case for forbearance for the Phoenix MSA. The analysis of competition in this Petition is designed to be consistent with the analytical framework applied by the Commission in Qwest's earlier request for forbearance in the Omaha MSA,[6] as well as the

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Areas, WC Docket No. 07-97, Memorandum Opinion and Order, 23 FCC Rcd 11729, 11745 ¶ 22, 11754-56 ¶ 36 (2008) ("*Qwest 4 MSA Order*"), *appeal pending sub nom. Qwest v. FCC*, D.C. Cir. No. 08-1257, currently in abeyance.

[3] *Id.* at 11753-54 ¶ 35, n.127.

[4] *Id.* at 11743-45 ¶ 21. As reflected in its appeal of the *Qwest 4 MSA Order*, Qwest believes that the Commission erred in refusing to consider national "cut the cord" data in assessing Qwest's market share in Phoenix. *See* Qwest's Motion for Expedited Consideration, *Qwest Corp. v. FCC*, No. 08-1257, filed Aug. 1, 2008 (D.C. Cir.). That appeal is currently in abeyance before the Court of Appeals for the D.C. Circuit. *See* note 2, *supra.*

[5] *Qwest 4 MSA Order*, 23 FCC Rcd at 11746 ¶ 23.

[6] *In the Matter of Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, Memorandum Opinion and Order, 20 FCC Rcd 19415 (2005) ("*Omaha Forbearance Order*"), pets. for rev. dismissed and denied on the merits, *Qwest v. FCC*, 482 F.3d 471 (D.C. Cir. 2007).

analysis applied in the subsequent *Verizon Six MSA*[7] and *Qwest 4 MSA*[8] proceedings. As this Petition, the Declaration of Robert Brigham ("Brigham Declaration"), and the supporting exhibits demonstrate, Qwest's market share, calculated using the Commission's methodology,[9] has decreased to *****Begin Confidential End Confidential*****[10] which is substantially less than the 50% market share figure the Commission has previously relied upon.[11] This share calculation accounts for the fact that, based on a new survey conducted in fall of 2008, 25% of households in the Phoenix MSA have "cut the cord" by substituting wireless service for their wireline service.[12] As the Commission already found in the *Qwest 4 MSA Order*, and this Petition shall further demonstrate, Qwest faces formidable facilities-based competition in the Phoenix MSA. In the *Qwest 4 MSA Order*, the Commission did find that Cox Communications ("Cox") had deployed facilities that meet the 75 percent coverage threshold in some Phoenix

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[7] *In the Matter of Petitions of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Boston, New York, Philadelphia, Pittsburgh, Providence and Virginia Beach Metropolitan Statistical Areas*, Memorandum Opinion and Order, 22 FCC Rcd 21293 (2007) ("*Verizon 6 MSA Petitions Order*"), pet. for rev. filed Jan. 14, 2008 (D.C. Cir. No. 08-1012), oral argument held Nov. 17, 2008.

[8] *See* note 2, *supra.*

[9] *See Qwest 4 MSA Order*, 23 FCC Rcd at 11763-64, Appendix B.

[10] The "facilities-based residential access lines" input defined in the Commission's "Appendix B" methodology is estimated based on residential facilities-based directory listings. This figure slightly overstates the amount of competitive facilities-based lines since some of the directory listings may be associated with the few residential lines that are served by carriers that may rely on unbundled network element ("UNE") loops leased from Qwest (most UNE loops serve business customers). This counsels all the more for the Commission requiring carriers to report in this proceeding their actual line counts in the Phoenix MSA.

[11] *See, e.g., Qwest 4 MSA Order*, 23 FCC Rcd at 11750 ¶ 28.

[12] In the intervening months since denial of its Petition, Qwest engaged Market Strategies International to conduct a more granular, disaggregated study that demonstrates the pervasiveness of wireless substitution in the Phoenix MSA. Details of the study will be discussed below.

wire centers.[13] In the *Omaha Forbearance Order*, the Commission had found that unbundling relief was warranted "in those wire center service areas where, among other things, Cox's voice-enabled cable plant covered more than 75% of the end-user locations that were accessible from those wire centers."[14] The Commission noted that "future relief from unbundling obligations might be warranted in such wire centers upon a showing of a more competitive environment in these MSAs."[15]

Competition in the Phoenix MSA has grown even more intense since the filing of Qwest's last forbearance Petition. Multiple competitive alternatives are available to mass market and enterprise customers alike, from cable providers, traditional CLECs, wireless providers and Voice over Internet Protocol ("VoIP") providers. Cox is the largest provider of competitive voice services in the Phoenix MSA. Based upon publicly available information, Cox currently appears to offer voice services even more widely in Phoenix than the data demonstrated in regard to Qwest's last Petition, and it does so over its own network. In this Petition, Qwest can only rely upon aggregate data to assess facilities-based providers' share of the Phoenix MSA market, due to the Protective Order in WC Docket No. 07-97 which prohibits the use of disaggregated Cox access line data from that docket in this proceeding. While the Commission could allow the Protective Order to be modified to allow use of that data in this proceeding to corroborate what the aggregate data demonstrates, the far better alternative is for the Commission to request that Cox provide updated line counts in this proceeding. Nevertheless, the substantial increase in

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13 *Qwest 4 MSA Order*, 23 FCC Rcd at 11753-54 ¶ 35.

14 *Omaha Forbearance Order,* 20 FCC Rcd at 19444 ¶ 59; *see also Wireline Competition Bureau Discloses Cable Coverage Threshold in Memorandum Opinion and Order Granting Qwest Corporation Forbearance Relief in the Omaha Metropolitan Statistical Area*, WC Docket No. 04-223, Public Notice, 22 FCC Rcd 13561 (2007).

15 *Qwest 4 MSA Order*, 23 FCC Rcd at 11753-54 ¶ 35.

wireless substitution indicated by the Qwest-commissioned study of the Phoenix MSA as well as other third-party studies showing that the Phoenix MSA outpaces the national average for wireless substitution in conjunction with the non-wireless competition demonstrated in this Petition, demonstrates that there is sufficient competition to warrant forbearance.

The intermodal competition, particularly from wireless and VoIP providers is more advanced than it was in Omaha, Nebraska in mid-2005, when the Commission voted on the *Omaha Forbearance Order*.[16] In the *Omaha Forbearance Order,* the Commission found "extensive facilities-based buildout in the Omaha MSA, and a growing success [from competitors] in luring Qwest's mass market customers."[17] The even more prevalent facilities-based competition in the Phoenix MSA is a strong factor in support of the granting of this Petition.

In perhaps the most telling example of the competition Qwest is facing, despite significant growth and increased telecommunications spending in the Phoenix MSA, Qwest has actually experienced significant access line loss. According to the latest available U.S. Census data, as of June 2007 there were approximately 1.67 million households and 4.18 million people in the Phoenix MSA, up from 1.33 million and 3.25 million respectively for the year 2000.[18] Clearly, the Phoenix MSA has experienced a strong upward growth trend, with households up 25% and population up 28% over this timeframe, and it may be conservatively assumed that demand for telecommunications services in the Phoenix area has increased apace. According to the Bureau of Labor Statistics, average annual household spending on telephone services

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[16] *See* note 6, *supra.*

[17] *Omaha Forbearance Order*, 20 FCC Rcd at 19432-33 ¶ 36.

[18] U.S Census Data, *see*: http://www.census.gov/popest/metro/tables/2007/CBSA-EST2007-05.xls, http://www.census.gov/popest/housing/tables/HU-EST2007-04-04.xls, and http://www.census.gov/popest/metro/tables/2007/CBSA-EST2007-01.xls.

increased 26.8% between 2000 and 2007 in the western region of the U.S. (which includes Arizona) and increased 25.4% in urban areas (such as Phoenix) between 2000 and 2007.[19] However, despite the growth in households, population and telecommunications demand, Table 1, found in the Brigham Declaration, shows that Qwest's retail access line base in the Phoenix area has fallen sharply -- ***Begin Confidential End Confidential*** -- since 2000,[20] as residential and business customers have taken advantage of the expanding array of competitive alternatives to Qwest's local exchange services.[21] Qwest experienced a ***Begin Confidential End Confidential*** access line loss in the residential market and a ***Begin Confidential End Confidential*** access line loss in the business market.

As the Commission has found, cable companies are capable of using their networks to serve enterprise customers. As was the case in Omaha, Cox is actively marketing its services to small business, large enterprise, and government customers. Apart from cable, there are ***Begin Confidential End Confidential*** competitive providers that operate their own fiber networks in areas where enterprise customers are concentrated in the Phoenix MSA, and competitors serve business customers in ***Begin Confidential End Confidential*** of Qwest's wire centers in the MSA.

In this competitive environment, imposing regulation crafted in and for an earlier era is unnecessary and counterproductive.

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[19] Bureau of Labor Statistics, *see* http://data.bls.gov/cgi-bin/dsrv?cx.

[20] Qwest has performed an analysis which demonstrates that a very small fraction of the Qwest retail access line decline over this period can be attributed to the conversion of additional lines used for dial-up Internet access to Qwest DSL lines. *See* Brigham Declaration at 3, n.7.

[21] Residential, Business and Public access lines by wire center for the Phoenix MSA (December 2008) are provided in Confidential Exhibit 2 of the Brigham Declaration.

II. THE FIRST TWO PARTS OF THE FORBEARANCE TEST ARE SATISFIED AS A CONSEQUENCE OF THE ROBUST AND RAPIDLY GROWING TELECOMMUNICATIONS COMPETITION IN THE PHOENIX MSA

As a general matter, Qwest is seeking substantially the same regulatory relief the Commission granted in the *Omaha Forbearance Order*.[22] The relief sought by Qwest in this petition is identical to that requested by Verizon in its six MSA petitions,[23] except that Qwest does not request forbearance from rule sections 63.60-63.66. Qwest is requesting forbearance from loop and transport unbundling regulation pursuant to 47 U.S.C. §§ 251(c) and 271(c)(2)(B)(ii), *see* 47 C.F.R. §§ 51.319(a), (b), (e). Qwest seeks this relief for its wholesale provision of voice-grade, DS1 and DS3 unbundled loop and transport facilities. The specific rule sections for which Qwest is seeking relief are 47 C.F.R. §§ 51.319(a), 51.319(b), and 51.319(e).

Qwest also seeks relief from dominant carrier price cap regulations and certain related tariffing and pricing rules based on the significant competition that Qwest faces for both mass market and enterprise switched access services. Specifically, Qwest seeks relief from dominant carrier tariff requirements (47 C.F.R. Part 61). Subpart E of Part 61 includes Sections 61.32 (method of filing these tariffs), 61.33 (the required transmittal letter), 61.38 (the required supporting information), 61.58 (the associated notice requirements), and 61.59 (the effective period required before any changes can occur). If Qwest is granted relief from these dominant carrier tariff requirements, it would be subject to the permissive detariffing rules in Subpart C, sections 61.18-61.26, which apply to CLECs. Qwest notes that the Commission granted similar

[22] *Omaha Forbearance Order*, 20 FCC Rcd at 19417 ¶ 2.

[23] *See* Petitions of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Boston (footnote 3), New York (footnote 3), Philadelphia (footnote 3), Pittsburgh (footnote 3), Providence (footnote 3) and Virginia Beach (footnote 3) Metropolitan Statistical Areas, WC Docket No. 06-172, filed Sept. 6, 2006.

relief for mass market exchange access services in the *Omaha Forbearance Order*.[24] The Commission conditioned the relief from dominant carrier tariffing requirements upon Qwest's compliance with the same permissive detariffing obligations that apply to CLECs.[25] Qwest is willing to accept this condition for the forbearance Petition at issue here.

Qwest is seeking relief from Price Cap Regulations (Part 61) for its interstate mass market and enterprise services in the Phoenix MSA. The rules for which we are seeking forbearance are found in 47 C.F.R. Sections 61.41-61.49. The Commission granted forbearance from price cap regulation for exchange access services in the *Omaha Forbearance Order*.[26] The Commission conditioned forbearance from applying section 61.41 "to Qwest's mass market access service changes on Qwest's compliance with regulations that apply to all competitive LECs, in particular section 61.26 of the Commission's rules."[27] In doing so, the Commission extended to Qwest the current benchmark that applies to all of its competitors -- Qwest's tariffed rate as of July 1, 2005.[28] Qwest is willing to accept this condition here as well, as discussed below.

Qwest agrees to comply with the same regime under which CLECs currently operate, with the exception that Qwest will file tariffs for switched access, which may be done on one-day's notice.[29] Qwest further agrees to benchmark its switched access rates as a non-dominant carrier at the level of Qwest's tariffs as of July 1, 2010. Thus, Qwest would be subject to a

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[24] *Omaha Forbearance Order*, 20 FCC Rcd at 19434 ¶ 39.

[25] *Id.* at 19435 ¶ 41.

[26] *Id.* at 19434 ¶ 39.

[27] *Id.*

[28] *Id.* at 19435 ¶ 41.

[29] Qwest may also file tariffs on seven or 15-days' notice and receive deemed lawful treatment for those rates, similar to CLECs.

benchmark on terminating interstate switched access rates similar to the benchmark that the Commission imposed on Qwest pursuant to 47 C.F.R. § 61.26 of the Commission's rules in the *Omaha Forbearance Order*.[30] To implement relief from the tariffing and price cap rules, the geographic areas receiving relief would be removed from the tariff and the associated demand would be removed from the tariff review plan which implements the price cap mechanism using the same process as used when implementing Phase II Pricing Flexibility. Qwest also agrees to continue to file all contract offerings as contract tariffs to the extent such filings are otherwise required.

As with switched access rates, Qwest agrees that the areas getting relief would be removed from the Qwest dominant carrier tariff. Qwest agrees that subscriber line charges ("SLCs"), and potentially primary interexchange carrier charge ("PICC") and common carrier line charge ("CCLC") rate elements, in the areas getting relief would be placed in a non-dominant tariff. IAS support would continue per Part 54. Qwest agrees to use the Subpart C rules in Part 69 and the associated rules in Part 61 to calculate maximum SLC rates "as if" the demand for the SLCs that have received relief was still being treated as dominant and subject to the rules. The maximum SLC rates would be produced for the entire study area and would represent the maximum rates which could be charged. The actual rates in the non-dominant tariff or in contracts could be lower. This method will prevent "double recovery" with regard to IAS. It would also provide for an equitable treatment of the SLCs and for the IAS in the portion of the study area not receiving forbearance. The annual changes to the IAS received in the study area would also be accommodated. Qwest's maximum SLC rates, therefore, cannot be

[30] *Omaha Forbearance Order*, 20 FCC Rcd at 19435 ¶ 41.

eliminated or modified absent future Commission action except as part of the workings of the Part 69 subpart C rules.

Given that the study area wide averaging is for tariffed services and the services getting relief would no longer be controlled by dominant carrier tariffs, the study-area wide averaging would no longer apply to the services receiving relief. Study-area wide averaging would continue to apply to all other services per Part 69 including any allowed variances such as zone rates.

With regard to footnote 102 in the *Verizon 6 MSA Order*,[31] the process of removing the demand from the TRP provides for the urban to rural subsidy inherent in study area wide averaging to continue. After the demand is removed the average rates are not changed and are continued in the TRP and the tariff for switched access. This process for removing demand does not create any additional "head room" and hence no opportunity to increase rates in the rest of the study area. For SLCs, using the Part 69 Subpart C rules on an "as if" basis also provides for the continued subsidies in the study area wide averaging by using the demand in the areas receiving relief to set rates for the study area.

Qwest is also seeking relief from dominant carrier requirements under 47 U.S.C. § 214 of the Act and 47 C.F.R. Part 63 regarding the process for acquiring lines, discontinuing services, making assignments or transfers of control.[32] Qwest requests this relief for its mass market and enterprise services in the Phoenix MSA. The Commission granted similar relief in the *Omaha Forbearance Order*.[33]

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[31] *Verizon 6 MSA Order*, 22 FCC Rcd at 21311 n.102.

[32] 47 C.F.R. §§ 63.03, 63.04.

[33] *Omaha Forbearance Order,* 20 FCC Rcd at 19435-36 ¶ 43. In its earlier Petitions, Qwest requested forbearance relief for rule Sections 63.60-63.66, 47 C.F.R. §§ 63.60-63.66, but ultimately withdrew that request. Qwest does not request that relief here.

Finally, Qwest requests forbearance in the Phoenix MSA from the application of the Commission's *Computer III* requirements, including Comparably Efficient Interconnection ("CEI") and Open Network Architecture ("ONA") requirements, to the mass market and enterprise switched access services at issue here "to the extent that Qwest offers information services in conjunction with such services."[34] Qwest seeks forbearance as to any remaining BOC-specific *Computer III* obligations. This forbearance would allow Qwest to respond quickly to customer demands for information services with innovative offerings.[35] As noted above, Qwest seeks relief for the geographic area that is encompassed by the 64 Qwest wire centers located within the boundaries of the Phoenix MSA.

III. LEGAL STANDARD

The Commission must forbear from regulating where the Commission determines that:

> (1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;
>
> (2) enforcement of such regulation or provision is not necessary for the protection of consumers; and
>
> (3) forbearance from applying such provision or regulation is consistent with the public interest.

47 U.S.C. § 160(a). In making the public interest determination the Commission may weigh the competitive effect of forbearance. "If the Commission determines that such forbearance will promote competition among providers of telecommunications services, that determination may

[34] *In the Matters of Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Its Broadband Services, Petition of BellSouth Corporation for Forbearance Under Section 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Its Broadband Services*, Memorandum Opinion and Order, 22 FCC Rcd 18705 (2007).

[35] *Id.* at 18734 ¶ 57.

be the basis for a Commission finding that forbearance is in the public interest." 47 U.S.C. § 160(b).[36]

In Omaha, where the Commission has already granted similar relief, consistent with the Commission's predictive judgment, Qwest is continuing to grant competitors wholesale access to its loop and transport facilities. If the Commission were to grant this forbearance Petition, Qwest would similarly continue to make loops and transport available on a commercial basis in Phoenix.

The Phoenix MSA is one of the most competitive areas within Qwest's 14-state region, and in the nation as a whole. Many carriers now actively compete in that market. In each of Qwest's 64 wire centers in the Phoenix MSA,[37] customers now have the choice of at least one, and often many more, alternatives to Qwest's retail telecommunications services.

A. Mass Market Consumers Have Access To A Wide Range Of Competitive Alternatives

Mass market consumers throughout the Phoenix MSA now have access to a wide range of competitive alternatives for affordable local telephone service. In prior proceedings, the Commission has defined mass market customers as "residential and small business customers that purchase standardized offerings of communications services."[38] Consistent with the Commission's earlier findings, Qwest faces competition from a variety of providers of retail

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[36] The Commission may not forbear from the requirements of Sections 251(c) or 271 until those requirements have been fully implemented. 47 U.S.C. § 160(d). The Commission has previously determined that Section 251(c) has been "'fully implemented' for all incumbent LECs nationwide." *Omaha Forbearance Order*, 20 FCC Rcd at 19439-40 ¶¶ 51-53.

[37] Confidential Exhibit 2 to the Brigham Declaration lists Qwest's Phoenix MSA wire centers by name.

[38] *See In the Matter of Petition of Qwest Communications International Inc. for Forbearance from Enforcement of the Commission's Dominant Carrier Rules As They Apply After Section 272 Sunsets*, Memorandum Opinion and Order, 22 FCC Rcd 5207, 5217 n.56 (2007) ("*Sunset Order*").

mass market services. These competitors include a cable service provider, wireline CLECs, wireless carriers, and over-the-top VoIP providers.[39] As the Commission found in the *Sunset Order,* intermodal competition between wireline service and services provided on alternative service platforms, including VoIP and wireless, has been increasing and is likely to continue to increase.[40] Throughout the Phoenix MSA, these competitors offer voice services that are competitive with Qwest's service offerings and are comparably priced. As demonstrated below, in addition to being widely available, each of these competitive alternatives is also widely used by consumers in the Phoenix MSA.

1. Cable

In the *Qwest 4 MSA Order*, the Commission found that Qwest is "subject to intermodal competition, particularly from cable operators, primarily for residential services."[41] Indeed, cable telephony has grown rapidly in the U.S. and in the Phoenix MSA. According to the National Cable and Telecommunications Association ("NCTA"), as of September 2008, there were 18.7 million cable phone subscribers in the U.S.[42] Independent industry analysts identify ILEC access line losses to cable telephony providers as significant and continuing.[43] The most prevalent source of competition in the Phoenix MSA is Cox, which offers facilities-based alternatives to Qwest's service via its extensive hybrid coaxial cable and fiber network, along with Cox-owned switches. Cox offers a broad range of telecommunications services to residential, small business and Enterprise business customers in the Phoenix MSA, and has enjoyed significant success in

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[39] *See id.* at 5224 ¶ 29.

[40] *See id.* at 5219-20 ¶ 20.

[41] *Qwest 4 MSA Order*, 23 FCC Rcd at 11740 ¶ 16 (footnote omitted).

[42] See: http://www.ncta.com/StatsGroup/OperatingMetric.aspx, visited 2-18-09.

[43] Brigham Declaration ¶ 7.

marketing its Digital Telephone service to these residential and business customers. Cox began offering telephone service in the Phoenix MSA in 1999, and has grown its telephone subscriber base at rapid pace in Phoenix and in its other U.S. markets.[44] Cox also has demonstrated high growth in the business market.[45]

Cox has added wireless service to its bundle of digital cable, high-speed Internet, and telephone service, and has already gained a 3% share of the Phoenix wireless market.[46] Clearly, Cox is continuing to aggressively expand its focus in serving residential and business telecommunications markets in direct competition with Qwest.

Cox describes its operation in the Phoenix MSA as follows:

> In the metro Phoenix, Cox serves approximately 2.5 million product subscribers. In Southern Arizona, Cox serves approximately 400,000 product subscribers. Cox's 18,000-mile hybrid fiber coaxial cable network throughout Phoenix and Southern Arizona provides homes and businesses with digital television, high speed Internet, home networking, high-definition television and digital telephone service over its own nationwide IP network, as well as integrated wireless services in partnership with Sprint.[47]

Clearly, cable service providers such as Cox see cable-based telephony as a very important growth opportunity, and as an important component of a "sticky" bundle of services that includes cable, high-speed Internet access and now wireless. Not only are cable service providers such as Cox continuing to enjoy strong success in capturing landline telephone subscribers from ILECs such as Qwest, they are also winning a substantial proportion of the new broadband subscriber base.

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[44] *Id.* ¶ 8.

[45] *Id.*

[46] *Id.* ¶ 10.

[47] *See*: http://www.cox.com/arizona/press/1080115.asp, visited 1-27-09.

Cox continues to expand its footprint in the Phoenix MSA. In the Phoenix MSA alone, Cox's network passes approximately 1.5 million homes (including the CableAmerica properties),[48] comprising approximately 90% of the 1.67 million housing units identified in the U.S. Census data in the Phoenix MSA. As of December 2008, Cox was serving a geographic area within the Phoenix MSA encompassing Qwest wire centers that account for approximately *****Begin Confidential End Confidential***** of the Qwest retail residential lines and over *****Begin Confidential End Confidential***** of the Qwest retail business lines in the MSA.[49]

As it did in WC Docket No. 07-97, Qwest encourages the Commission to seek "coverage" information directly from Cox to determine the actual extent to which Cox's telecommunications services are currently available to customers within Qwest's service footprint in the Phoenix MSA. However, it is critical that such data be interpreted properly. The Commission must note that such "coverage" statistics represent the proportion of *homes passed* by Cox's hybrid fiber/coaxial network facilities. These statistics do not relate to an entire geographic area, since there are geographic areas within Qwest's wire centers in the Phoenix MSA where no homes or businesses exist. Those areas are certainly not relevant to a network "coverage" analysis regarding actual customers that can be easily served by Cox.[50]

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[48] Source: CentrisPlus, 2006.

[49] To confirm the accuracy of the Cox DMA map for the greater Phoenix area, Qwest compared the Cox DMA map coverage area (Exhibit 3 of the Brigham Declaration) with the list of communities Cox now serves in the Phoenix MSA as reported to the FCC. *See*: http://www.fcc.gov/mb/engineering/liststate.html. *See also* Confidential Exhibit 1of the Brigham Declaration.

[50] In its June 17, 2008 data submission to the FCC in WC Docket No. 07-97, Cox listed several Phoenix MSA communities as having "no coverage," even though those communities are served by the CableAmerica systems acquired by Cox in June 2006. As the FCC seeks updated information from Cox in this proceeding, it must be made clear that Cox must include its

In sum, Cox has extensive facilities in the Phoenix MSA capable of delivering mass market services. *See Omaha Forbearance Order*[51] (finding that such facilities demonstrate that supply elasticity is high). Cox has been "successfully providing local exchange and exchange access services . . . without relying on Qwest's loops or transport."[52] Thus, as the Commission held in the *Omaha Forbearance Order*, this competition is, standing alone, "sufficient to justify forbearance" from loop and transport unbundling regulations,[53] and from dominant carrier regulation of switched access services;[54] Cox's extensive facilities build-out in the Phoenix MSA, and its growing success in luring Qwest's mass market customers, indicates that the first factor is easily satisfied.[55]

2. Wireless

Competition from wireless providers is flourishing in the Phoenix MSA and in Arizona as a whole. According to the FCC's Local Competition Report, as of December 2007 there were over 4.8 million wireless lines in Arizona, while there were only 3.1 million wirelines (both ILEC and CLEC).[56] In fact, wireless lines increased from 2,171,021 in December 2001 to

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acquired properties through which Cox is able to deliver telecommunications services to customers within the Phoenix MSA.

[51] *See Omaha Forbearance Order*, 20 FCC Rcd at 19948 ¶ 66; *see id.* at 19432-33 ¶¶ 35-36.

[52] *Id.* at 19447 ¶ 64.

[53] *Id.* at 19450-51 ¶ 69.

[54] *Id.* at 19432-33 ¶ 36.

[55] *Id.*

[56] *Local Telephone Competition: Status as of December 31, 2007*; Industry Analysis and Technology Division, Wireline Competition Bureau, September 2008, tables 7, 9, 10 & 14.

4,799,648 in December 2007, an increase of 121% in six years.[57] The FCC data shows that the wireless share of the total access line market has grown significantly over this timeframe.[58]

Virtually all residents of the Phoenix MSA have multiple wireless options. The decline in Qwest landlines, coupled with the dramatic increase in wireless connections demonstrates that Phoenix MSA customers increasingly view wireless phones as a substitute for wireline service, and that wireless phones are in fact replacing wireline phones. Several major wireless service providers, including Alltel,[59] Verizon, AT&T, T-Mobile, Sprint and Cricket provide service in the Phoenix MSA, with at least one wireless provider providing wireless service in every Qwest wire center.

A significant number of customers have "cut the cord" and no longer subscribe to wireline service. According to a survey conducted by the National Center for Health Statistics ("NCHS"), in the first six months of 2008, 17.5% of U.S. households did not have a traditional landline telephone, but did have <u>at least</u> one wireless telephone.[60]

While 17.5% of U.S. households have already "cut the cord," another 13.3% of U.S. households are "wireless mostly" and use their wireless phone for nearly all calling. In total, these wireless only and "wireless mostly" households make up 30% of U.S. households. Clearly, wireless substitution is a significant, and increasing, competitive factor driving RBOC access line reductions.[61]

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[57] *Id.*, table 14.

[58] *Id.*

[59] On January 9, 2009, the acquisition of Alltel Wireless by Verizon Wireless was completed. As of this writing, Alltel was still operating as a separate entity.

[60] Brigham Declaration ¶ 14.

[61] *Id.*